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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,855	11/15/2001	Agapios Kyriacos Agapiou	2000U055.US	6866

25959 7590 12/23/2004

UNIVATION TECHNOLOGIES LLC  
5555 SAN FELIPE, SUITE 1950  
HOUSTON, TX 77056

EXAMINER

PASTERCZYK, JAMES W

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/998,855

Applicant(s)

AGAPIOU ET AL. 

Examiner

J. Pasterczyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5-7,19,20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,19,20 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1,3,5-7,19,20 and 23 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. This Office action is in response to the election of 11/5/04. Election of diester phosphates as the gelling agent is acknowledged.

2. Claims 3, 7 and 23 are objected to because of the following informalities: in claims 3 and 7 it is not clear to what categories of genus gelling agents the compounds of 1. 4 belong to, and the first member of 1. 3 does not appear to belong to any of the classes recited in the independent claims. In claim 23, the first line recites that the claim depends from itself, and 1. 2 through the end of the claim would more clearly read --gelling agent excludes mono-, di-, and tri-carboxylic acid salts with a metal counterion--. Appropriate correction is required.

3. Claims 1, 3, 5-7, 19, 20 and 23 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the polymerization catalyst being an early transition metal metallocene, does not reasonably provide enablement for the catalyst being anything else. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims.

The term "polymerization catalyst" as defined in the present specification includes a broad range of such catalysts, none of which necessarily have similar chemistries toward olefins, let alone gelling agents. However, the only working example given uses an early transition metal metallocene as the catalyst, and that with only one gelling agent of the many encompassed by applicants' claims and disclosure. The present claims are considered to be too overly broad to be properly enabling for the current specification without excessive experimentation, considering that chemistry is considered to be an unpredictable art and catalysis even moreso.

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 6 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Specia, USP 4,536,487 (hereafter referred to as Specia).

Specia discloses the invention as claimed (abstract; col. 6, l. 16-39; example 1).

6. Claims 1, 6 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Putzig et al., USP 6,066,714 (hereafter referred to as Putzig).

Putzig discloses the invention as claimed (abstract; col. 3, l. 32-46; examples).


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Pasterczyk whose telephone number is 571-272-1375. The examiner can normally be reached on M-F from 9 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached at 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Mark L. Bell**  
Supervisory Patent Examiner  
Technology Center 1700



J. Pasterczyk

AU 1755

12/15/04